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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,967

10/16/2003

Channing K. Barringer

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EXAMINER

MEYERS, MATTHEW S

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/686,967	<b>Applicant(s)</b> BARRINGER ET AL.	
	<b>Examiner</b> MATTHEW S. MEYERS	<b>Art Unit</b> 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to applicant's communication on 2/4/08, wherein claims 1 and 2 have been amended and claim 6 has been newly added. Therefore claims 1-6 are currently pending.

### ***Election/Restrictions***

2. Applicant responded to the requirement for election restriction on September 7, 2007 and elected Group I, claims 1-5. Claims 6 - 14 were cancelled by applicant, without prejudice or disclaimer of the subject matter presented therein, and are withdrawn from further consideration by the Examiner.

### ***Priority***

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

### ***Claim Objections***

4. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 6 been renumbered 16.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

6. Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. The claimed invention is directed to non-statutory subject matter. Claim 1 is directed non-statutory subject matter is therefore rejected; claims 2 – 5 and new claim 16 depend from Claim 1 and are therefore rejected as well.

8. Claims 1-5 and new claim 16 are rejected under 35 U.S.C. 101 because for a claimed invention to be statutory, the claimed invention must produce a useful concrete, and tangible result. “Usefulness” may be evidenced by, but not limited to, a specific utility of the claimed invention. “Concreteness” may be evidence by, but not limited to, repeatability and/or implementation without undue experimentation. “Tangibility” may be evidence by, but not limited to, a real or actual effect.

In the present case, Under the broadest reasonable interpretation of the claimed invention as a whole, it encompasses a human being, in this case an owner who is the source of a story line. As a result, independent claim 1 is non-statutory due to the lack of concreteness of the invention. Exemplary claim 1 is directed towards a system of entertainment sponsorship marketing. However, this system requires an owner and possibly a plurality of employees, and further requires these people to act in a manner which requires them to determine a solution or resolution within the context of a story

line. The limitations and issues presented here are subjective. Thus, because the issues are subjective for a single situation, and based on the subjective determination and character of the user/owner, the applicant's invention is not capable of providing concrete results are required by 35 U.S.C. 101 since it would be difficult for a person to repeat the analysis and determination of another based on the subjective subject matter without undue experimentation.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.


10. Claims 1, 5, and new claim 16 are rejected under 35 U.S.C. 102(b) as being anticipated by "Agent Offers One-Stop TV Production", Bill Carter, March 11, 2002, New York Times, Late Edition (hereinafter referred to as "Carter").

11. With respect to claim 1, Carter discloses an entertainment sponsorship marketing system (product placement in a reality television show and shows that have multiple sources of financing, para 2 page 3)

a. a media source configured to broadcast via a first marketing channel a show having a story line related to a business operation having an owner, storyline being related to said business operation, wherein said business

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operation comprises independent commerce value distinct from said show (reality television show about creation and daily working of a real restaurant, para 8 page 2) (Examiner notes that a reality television show is a media source)

<sup>1</sup> [Dictionary.com Unabridged \(v. 1.1\) - Cite This Source - Share This](#)  
**me·di·a**  [Audio Help](#) [**mee**-dee-uh] [Pronunciation Key](#)

-noun

1. a pl. of [MEDIUM](#).

2. (*usually used with a plural verb*) the means of communication, as radio and television, newspapers, and magazines, that reach or influence people widely: *The media are covering the speech tonight.*

b.

- c. a processing entity configured to evaluate the storyline and determine a solution to an issue related to said business operation, wherein said solution includes incorporating a product into said storyline such that a nexus exists between said business operation and said product, said product configured to facilitate at least in part a resolution of said issue (interpreted to be disclosed as Carter teaches that advertisers will brought into the reality television series in capacities in addition to product placement, where the products are various food products, para 2 page 3. In a reality television show about a restaurant, food products would be well recognized to be configured to facilitate substantial resolution of certain issues related to said business operation), wherein said storyline demonstrates said product in a context of said business operation (products integrated into the reality television series, para 2 page 3); and
- d. an interface configured to accept input related to said solution from another owner of another business operation (para 8, page 2).

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12. With respect to claim 5, Carter discloses wherein said show is a reality television show (reality television series about the creation and daily working of a real restaurant, para 8 page 2).

13. With respect Claim 16, Carter discloses wherein the owner is the processing entity (interpreted to be disclosed as Carter teaches that advertisers will brought into the reality television series in capacities in addition to product placement, where the products are various food products, para 2 page 3. In a reality television show about a restaurant, food products would be well recognized to be configured to facilitate substantial resolution of certain issues related to said business operation)..

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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16. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of "Two Thumbs Up for Card Placement", Author Unknown, Credit Card Management, May 1993, (hereinafter referred to as "Card Placement").

17. With respect to claim 3, Carter does not disclose wherein said product includes financial assistance products. Card Placement teaches the placement of a VISA card - interpreted to be a financial assistance product - into the story line of a production where the card is integral to the storyline, para 6 page 2.

e. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate a financial assistance product as disclosed by Card Placement into a reality television show about a business as disclosed in Carter in order to provide a more efficient and valuable method of advertising a financial assistance product.

18. With respect to claim 4, Carter does not disclose wherein said product includes at least one of a transaction card, a financial service and a loan service. Card Placement teaches the placement of a VISA card - interpreted to be a financial service, transaction card, and a loan service - into the story line of a production where the card is integral to the storyline, para 6 page 2. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate a product as disclosed by Card Placement into a reality television show about a business as disclosed in Carter in order to provide a more efficient and valuable method of advertising a transaction card, a financial service and a loan service product.



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19. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Open Small Business Network (hereinafter referred to as "Open").

20. With respect to claim 2, Carter does not disclose wherein said interface is communicatively coupled to a network for facilitating communication between said another owner and said processing entity. Open teaches a network for facilitating communication between owners of similar business operations (see (i)). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate a product as disclosed by Open into a reality television show about a business as disclosed in Carter in order to provide a more efficient and valuable method of advertising a product such as Open, as a reality television show concerning the starting of a business in Carter would provide an ideal and efficient vehicle to promote a product such as Open and in addition, Carter teaches the integration of products into a reality television show about a business.

### ***Response to Arguments***

21. Applicant's arguments filed 2/4/08 have been fully considered but they are not persuasive. Applicant's arguments have been addressed throughout the action above, specifically regarding § 101, please see a further definition of the rejection previously presented in the first office action above.

***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW S. MEYERS whose telephone number is (571)272-7943. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S Meyers/  
Examiner, Art Unit 3689

/Janice A. Mooneyham/  
Supervisory Patent Examiner, Art Unit 3689